**Pabst Theater Foundation, Inc. *and* Milwaukee Theatrical Stage Employees Union, Local #18 of the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its territories and Canada, AFL–CIO, CLC. Case 30–CA–18389**

May 13, 2010

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER AND BECKER

## DECISION AND ORDER

On December 29, 2009, the National Labor Relations Board issued an Order[1] denying the General Counsel's Motion for Default Judgment on the ground that the complaint failed to allege that Milwaukee Theatrical Stage Employees Union, Local #18 of the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, AFL–CIO, CLC (the Union), is or had been the exclusive collective-bargaining representative of the unit employees. The Board concluded that, for purposes of that proceeding, absent such an allegation, it could not find that Pabst Theater Foundation, Inc. (the Respondent), violated the Act as alleged by unduly delaying execution of a written collective-bargaining agreement between the Respondent and the Union. The Board further stated that

> Nothing herein will require a hearing if, in the event of an amendment to the complaint alleging that the Union has been the exclusive collective-bargaining representative during the relevant time period, the Respondent again fails to answer, thereby admitting evidence that would permit the Board to find the alleged violation. In such circumstances, the General Counsel may renew the motion for default judgment with respect to the amended complaint allegations.[2]

Subsequently, on January 19, 2010, the General Counsel issued an amendment to the complaint, alleging that since at least April 2008, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit employees; has been recognized as the representative by the Respondent; and has been the exclusive collective-bargaining representative of the unit employees, based on Section 9(a) of the Act. The amendment to the complaint also alleged that this recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from April 1, 2009 to March 31, 2010. The Respondent again failed to file an answer.

Accordingly, on February 23, 2010, the General Counsel filed a Renewed Motion for Default Judgment with the Board. On March 5, 2010, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the renewed motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Renewed Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the amendment to the complaint affirmatively stated that unless an answer was filed on or before February 2, 2010, all the allegations in the amendment to the complaint may be found to be true, pursuant to a motion for default judgment Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated February 5, 2010, notified the Respondent that unless an answer was received by February 12, 2010, a renewed motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Renewed Motion for Default Judgment.

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

At all material times, the Respondent, a corporation, has been engaged in the management and operation of a facility for performing arts at its Milwaukee, Wisconsin facility. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its operations described above, derived gross revenues in excess of $1 million and purchased and received goods and materials valued in excess of $5000 directly from suppliers located outside the State of Wisconsin.

We find that at all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that

[1] 354 NLRB No. 121. The General Counsel issued the complaint and notice of hearing on September 18, 2009, upon a charge filed by the Union on July 22, 2009.

[2] Id., slip op. at 2.

the Union has been a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Gary Witt has held the position of executive director, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The employees of the Respondent, in the unit described more particularly in article VII of the collective-bargaining agreement in effect from April 1, 2009 to March 31, 2010, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Since at least April 2008, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit employees and since that time the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from April 1, 2009 to March 31, 2010. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employees.

About January 27, 2009, the Union and the Respondent reached a complete agreement on the terms and conditions of employment of the unit employees to be incorporated in a collective-bargaining agreement.

About February 16, March 12, April 6 and 16, June 10, 17, and 18, 2009, the Union requested that the Respondent execute a written contract containing the agreement described above.

From about February 16 until September 2, 2009, the Respondent, by Gary Witt, failed and refused to execute the agreement described above and unduly delayed execution of the written collective-bargaining agreement.

## CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing, from about February 16 until September 2, 2009, to execute a written contract that incorporates the terms of the collective-bargaining agreement reached by the parties on about January 27, 2009, we shall order the Respondent to make the unit employees whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's undue delay in executing the collective-bargaining agreement in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

## ORDER

The National Labor Relations Board orders that the Respondent, Pabst Theater Foundation, Inc., Milwaukee, Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Milwaukee Theatrical Stage Employees Union, Local #18 of the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, AFL–CIO, CLC, as the exclusive collective-bargaining representative of the unit employees by unduly delaying in executing a collective-bargaining agreement reached with the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Give retroactive effect to the terms and conditions of the collective-bargaining agreement reached by the Respondent and the Union on January 27, 2009, and make the unit employees whole for any loss of earnings and other benefits they have suffered as a result of the Respondent's undue delay in executing the agreement, with interest, as set forth in the remedy section of this decision.

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its facility in Milwaukee, Wisconsin, copies of the

attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 27, 2009.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 13, 2010

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

Craig Becker, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Milwaukee Theatrical Stage Employees Union, Local #18 of the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, AFL–CIO, CLC, as the exclusive collective-bargaining representative of the unit employees by unduly delaying in executing a collective-bargaining agreement reached with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL give retroactive effect to the terms and conditions of the collective-bargaining agreement reached by us and the Union on January 27, 2009, and WE WILL make you whole for any loss of earnings and other benefits you may have suffered as a result of our undue delay in executing the agreement, with interest.

PABST THEATER FOUNDATION, INC.